THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.18160 of 1997

DATED: 28.03.2007

Between:

G.Gandhi Babu. .. Petitioner

And

Chief Engineer, A.P.State Electricity Board,
Kadapa zone, Kadapa and others. .. Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.18160 of 1997

ORDER:

This Writ Petition is filed questioning the Show Cause Notice in CEE/CZ/CDP/112-1/F/D.No.3119/97, dated 25.07.1997, issued by the Chief Engineer, Andhra Pradesh State Electricity Board, Kadapa zone, Kadapa, the first respondent, whereunder the petitioner was called upon to Show Cause why the punishment proposed in para 5 of the notice should not be imposed on him.

(2) The petitioner was appointed as Sub-Overseer in Andhra Pradesh State Electricity Board (for short 'A.P.S.E.B.') in the year 1978 and at the relevant point of time, he was working as Additional Assistant Engineer at Hampapuram, Rapthadu Mandal, Anantapur district. The petitioner filed an application for divorce against his wife Smt.E.Saradamma on 21.07.1986 and obtained an *ex parte* decree of divorce from the Court of competent civil jurisdiction on 26.08.1986. When the petitioner gave an advertisement for contracting the second marriage in Eenadu Telugu daily, the divorced wife of the petitioner complained to the respondents, who initiated disciplinary proceedings. The Enquiry Officer-second respondent, who was appointed to hold the enquiry, framed a charge, which reads as hereunder:

> *"Sri G.Gandhi Babu, the then A.A.E/Korrakodu of Anantapur Circle is reported to have contracted a second marriage by*

taking a divorce decree fraudulently even though his first wife Smt.E.Saradamma is alive."

(3) The petitioner participated in the enquiry and at the conclusion of the enquiry, the Enquiry Officer submitted his report to the first respondent, who is the Disciplinary Authority. In the enquiry report, the petitioner was found guilty of the charge framed against him and the findings of the Enquiry Officer referred to in the Show Cause Notice are extracted hereunder:-

"(i) The marriage of Sri G.Gandhi Babu, AAE with Smt.E.Saradamma was performed on 22.10.1978. He filed petition for dissolution of marriage on 21.07.1986 before the sub-ordinate Judge, Anantapur and obtained ex parte decree of divorce on 26.08.1986.

(ii) Sri G.Gandhi Babu, AAE was living with Smt.E.Saradamma and her two children in the departmental quarters at Dharmavaram at the time of taking divorce decree. Most of the time, Sri G.Gandhi Babu, AAE used to live with them only.

(iii) Sri G.Gandhi Babu, AAE himself admitted that the paper advertisement given by him in Eenadu news paper for the second marriage was a secret one and there was no possibility for others to know this since his name and address were not mentioned therein.

(iv) Sri Gandhi Babu, AAE in a written statement has stated that he took the responsibility of maintaining Smt.E.Saradamma, his divorced wife, throughout his life, evenafter taking divorce as there was no one to support her and that he had decided not to neglect her and the children.

(v) The ex parte divorce decree was obtained by Sri G.Gandhi Babu, AAE within one month five days. The divorce petition was filed in the Court on 21.7.86 and ex parte decree was granted by the Hon'ble Court on 26.8.86. Smt.E.Saradamma deposed that she came to know about the divorce only after knowing the advertisement for the second marriage in the Eenadu Telugu daily through the neighbours

and afterwards on enquiry with Sri G.Gandhi Babu and through Sri Prasad, Lawyer, Anantapur.

(vi) It is clearly evident from the depositions of Smt.E.Saradamma and Sri G.Gandhi Babu, AAE that they lived together along with their children upto 12/1994 i.e., evenafter decree of divorce on 26.8.86. This fact was further corroborated by their two children Miss G.Sasikala and Mr.G.Lokesh Babu during the enquiry on 21.12.96.

(vii) Sri G.Gandhi Babu, AAE has applied for educational advance for their two children on 11.7.94 and got sanctioned while he was working as A.A.E/PABR Dam vide E.E/O&M/PABR/ATP/ D.No.2030/95, dated 13.11.95 i.e., after decree granting divorce to Sri G.Gandhi Babu, AAE with Smt.Saradamma. From the above, it is established that the delinquent had lived with Smt.E.Saradamma and their children till 12/1994 evenafter taking divorce decree in 8/86.

(viii) It is clear from the above that Sri G.Gandhi Babu, AAE had planned to contract second marriage very secretly keeping his first wife ignorant about the divorce decree dt.26.8.86. Had he taken the decree of divorce openly i.e., with the knowledge and consent of Smt.E.Saradamma, his first wife, there was no necessity for him to secretly contract his second marriage, without the knowledge of Smt.E.Saradamma, his divorced wife."

(4) On receipt of the enquiry report, the Chief Engineer Electricity, Kadapa zone, Kadapa-first respondent, issued the impugned Show Cause Notice. This Court admitted the Writ Petition and granted stay on 05.08.1997 and since then, the enquiry proceedings have been stalled during all these ten years.

(5) A counter affidavit has been filed by the Assistant Secretary/legal in APSEB, wherein the action of the first respondent in issuing the Show Cause Notice is justified.

(6) Heard Sri Chakravarthi, learned counsel appearing for the

petitioner and Smt.N.Saraswathi, learned counsel appearing for the respondent Nos.1 and 2. None appeared for respondent No.3.

(7) The facts of this case clearly reveal that the Writ Petition is totally misconceived and nothing but, an abuse of process of Court. The petitioner participated in the enquiry without any demur and after the Enquiry Officer submitted his report to the Disciplinary Authority, he approached this Court by filing the present Writ Petition and got the whole enquiry proceedings stalled. The only contention raised in the Writ Petition is that the third respondent, the wife of the petitioner, filed I.A.No.15 of 1995 in O.P.No.40 of 1986 for setting aside the *ex parte* decree already granted in favour of the petitioner and it is pending adjudication, and therefore, the respondents have no jurisidiction to proceed against the petitioner departmentally. This contention, in my view is preposterous. The respondents were concerned with the misconduct of the petitioner in defrauding his own wife, who was admittedly living with him at the time when the civil Court granted him an *ex parte* decree. The subject matter of the enquiry was whether the petitioner committed misconduct in obtaining divorce fraudulently from his wife and seeking to contract the second marriage. This has nothing to do with the proceedings pending before the civil Court, wherein the third respondent sought for setting aside the *ex parte* decree. Under law, there is no bar on the department to hold enquiry and take disciplinary action against any of its employees, who indulge in misconduct. The scope of disciplinary proceedings is, therefore, totally different from that of the proceedings before the civil Court, as the proceedings before the civil Court are between the petitioner and his wife.

(8) As held by the Supreme Court in **SPECIAL DIRECTOR AND**

ANOTHER v. MOHD. GHULAM GHOUSE AND ANOTHER[1]**,** the Courts would be loath to entertain a writ petition at the show cause notice stage. Unless the show cause notice issued by the authority is per se without jurisdiction or that the same was issued wholly mala fide, the High Court would not interdict the action proposed in the show cause notice while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

(9) As already mentioned, the petitioner, having participated in the enquiry without raising any objection, filed this Writ Petition after receiving the Show Cause Notice, obviously, anticipating that the respondents would impose a major penalty on him. The petitioner evidently wanted to postpone the evil day and he has successfully got his purpose served by filing this Writ Petition and stalling the proceedings for the last ten years.

(10) In my considered opinion, this Writ Petition is wholly vexatious. Under Andhra Pradesh State Electricity Board Employees (Revised) Conduct Regulations and under Regulations 10(1) and (2) of Andhra Pradesh State Electricity Board Employees' Discipline and Appeal Regulations, the employer has power to impose minor and major penalties on any employee found guilty of misconduct. It is not the case of the petitioner that the first respondent, who issued the Show Cause Notice, has no authority to issue the same. Even, if the petitioner has something to be said on merits of the case, it would have been open to him to file his explanation and raise objections, which are raised in the present Writ Petition. Without doing the same, the present Writ Petition is filed. This Writ Petition, which is wholly misconceived, is, therefore, liable to be dismissed with exemplary costs, as the petitioner abused the process of this Court. The

petitioner is therefore saddled with the costs of Rs.10,000/- and he is directed to deposit the sum of Rs.10,000/- to the Legal Services Authority within a period of four weeks from today and the Legal Services Authority is directed to submit its report on the payment of costs by the petitioner.

(11) For the aforementioned reasons, the Writ Petition is dismissed with costs as indicated above.

_____

(**C.V.NAGARJUNA REDDY,J)**

28.03.2007.
vv

---

[1] (2004) 3 SCC 440